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and LAURIE ALDERMAN

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**GEORGE E. BARICH and LAURIE
ALDERMAN.**

Plaintiffs,

vs.

**CITY OF COTATI and JOHN A.
DELL'OSSO,**

Defendants.

Case 3:21-cv-00034-EMC

**PLAINTIFFS' SUR-REPLY BRIEF
IN RESPONSE TO DEFENDANT'S
ORAL ARGUMENT RE THE
BROWN ACT**

Complaint filed: January 5, 2021
Trial date: January 30, 2023

This Sur-Reply is in response to a newly asserted argument made for the first time at the October 27, 2022 hearing on Defendants' Motion for Summary Judgment or Partial Summary Judgment, which argument had *not* been raised in their Motion or their Reply.

At the hearing, counsel for moving party defendants argued that the Brown Act prohibited Mayor Dell'Osso from making the accommodation requested by Mr. Barich, per the ADA, of moving the meeting from the Police Department Community Room to the City Council Chambers, where the public address system connected to the proffered electronic hearing-assist devices

1 would have enabled him to participate in spite of his hearing disability. Counsel quoted from the
2 Brown Act and represented to the Court that the Brown Act required 24 hours' public notice in
3 order to move the meeting.

4 However, counsel's quote from the Brown Act was out of context and misleading, in that
5 the Brown Act specifically requires compliance with the ADA. The statute is clear and
6 unambiguous:

7 Government Code § 54953.2

8 All meetings of a legislative body of a local agency that are open and public shall meet the
9 protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990
(42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

10 (Added by Stats. 2002, Ch. 300, Sec. 5. Effective January 1, 2003.)

11 Government Code § 54954.2

12 (a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its
13 designee, shall post an agenda containing a brief general description of each item of business to be
14 transacted or discussed at the meeting, including items to be discussed in closed session. A brief
15 general description of an item generally need not exceed 20 words. The agenda shall specify the
16 time and location of the regular meeting and shall be posted in a location that is freely accessible to
17 members of the public and on the local agency's Internet Web site, if the local agency has one. If
18 requested, the agenda shall be made available in appropriate alternative formats to persons with a
19 disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C.
20 Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda
21 shall include information regarding how, to whom, and when a request for disability-related
22 modification or accommodation, including auxiliary aids or services, may be made by a person with
23 a disability who requires a modification or accommodation in order to participate in the public
24 meeting.

25 (Amended by Stats. 2016, Ch. 265, Sec. 1. (AB 2257) Effective January 1, 2017.)

26 Thus, pursuant to Section 54953.2, all meetings of a legislative body, other than closed
27 session meetings or parts of meetings involving a closed session, are required to be held in a
28 location and conducted in a manner that complies with the Americans with Disabilities Act of
1990. The agenda shall include information regarding how, to whom, and when a request for
disability-related modification or accommodation, including auxiliary aids or services, may be
made by a person with a disability who requires a modification or accommodation in order to
participate in the meeting. § 54954.2.

Respectfully submitted,

Dated: November 1, 2022

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By: /s/John Houston Scott
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GEORGE E. BARICH
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Dated: November 1, 2022

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